

House Bill 1134

By: Representatives Willard of the 49<sup>th</sup>, Ramsey of the 72<sup>nd</sup>, Pruett of the 144<sup>th</sup>, and Hamilton of the 23<sup>rd</sup>

A BILL TO BE ENTITLED  
AN ACT

To amend Title 50 of the Official Code of Georgia Annotated, relating to state government, so as to enact the "State and Local Public-Private Partnership Act of 2010"; to state legislative findings and intent that certain state and local government programs, services, and activities may be carried out and delivered with greater efficiency or at a reduced cost through public-private partnerships; to provide for implementation through an office and an advisory council; to provide for powers and duties of the office in encouraging and facilitating state and local partnership initiatives; to provide for elements of partnership initiatives; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended by inserting a new chapter to read as follows:

"CHAPTER 5C

50-5C-1.

This chapter shall be known and may be cited as the 'State and Local Public-Private Partnership Act of 2010.'

50-5C-2.

The General Assembly finds that:

(1) Many, but not all, state and local government programs, services, and activities may be carried out and delivered with greater efficiency or at a reduced cost through public-private partnerships;

(2) Certain other state and local government programs, services, and activities are inherently governmental and not appropriately subject to privatization; and

(3) There exists a need to provide within state government a central repository of knowledge and expertise with respect to public-private partnerships in order to encourage and facilitate state and local government efforts in this area where practicable and beneficial.

50-5C-3.

As used in this chapter, the term:

(1) 'Agency' means any department, board, bureau, commission, authority, or other agency of the state.

(2) 'Council' means the Advisory Council on Public-Private Partnerships established pursuant to this chapter.

(3) 'Director' means the director of implementation within the office of the Governor.

(4) 'Government' may mean state government, a state agency, or a political subdivision of the state, as determined by the context.

(5) 'Office' means the Office of Public-Private Partnerships established pursuant to this chapter.

(6) 'Partnership initiative' means the development of a public-private partnership for the carrying out or delivery of one or more state or local government programs, services, or activities.

(7) 'Public-private partnership' means a contract between a unit of government and a private business, nonprofit organization, or other nongovernmental entity.

50-5C-4.

(a) There is established within the executive branch of state government the Office of Public-Private Partnerships, which shall be an independent office assigned for administrative purposes to the office of the Governor; and funds may be appropriated for purposes of the office.

(b) There is established within the office of the Governor the position of director of implementation which shall have the functions provided for in this chapter and such other functions as may be specified by the Governor.

(c) The office shall function under the direct management of the director of implementation within the office of the Governor.

(d) The chief operating officer and chief financial officer with the office of the Governor shall exercise supervisory authority and provide policy direction for the Office of Public-Private Partnerships.

57 50-5C-5.

58 (a) There is established the Advisory Council on Public-Private Partnerships which shall  
59 serve in an advisory capacity to the chief operating officer, chief financial officer, and  
60 director of implementation with respect to the purposes of this chapter.

61 (b) The advisory council shall consist of five business leaders appointed by the Governor,  
62 one ex-officio member appointed by the Lieutenant Governor, and one ex-officio member  
63 appointed by the Speaker of the House of Representatives. A chairperson and any other  
64 necessary officers shall be appointed by the Governor.

65 (c) All members of the advisory council shall serve without compensation and shall serve  
66 at the pleasure of the appointing officer.

67 50-5C-6.

68 The office shall have the following powers and duties under this chapter:

69 (1) To identify state programs, services, and activities which are candidates for  
70 partnership initiatives through the process described in Code Section 50-5C-7;

71 (2) To identify local programs, services, and activities which are candidates for  
72 partnership initiatives through the process described in Code Section 50-5C-8;

73 (3) Upon request, to review and comment on proposed partnership initiatives of state and  
74 local government;

75 (4) To provide advice and technical assistance with respect to the planning, awarding,  
76 and implementation of partnership initiatives of state and local government; and

77 (5) To provide an annual report to the Governor, the Lieutenant Governor, and the  
78 Speaker of the House of Representatives with respect to the development and  
79 implementation of partnership initiatives by state and local government.

80 50-5C-7.

81 (a) The office shall compile and from time to time revise a list of all programs, services,  
82 and activities carried out and delivered by state agencies and shall evaluate whether each  
83 program, service, or activity is a candidate for a partnership initiative or is an inherently  
84 governmental activity which is not a candidate for a partnership initiative; and in the case  
85 of each program, service, or activity identified as inherently governmental, a rationale of  
86 why the program, service, or activity cannot or should not be carried out through a  
87 partnership initiative.

88 (b) Based on a review of the compilation by the office, the director shall as part of the  
89 annual report include a state-wide listing of programs, services, and activities which are in  
90 the director's opinion candidates for partnership initiatives, with a ranking of suitability  
91 based on likely increased efficiency, cost savings, or other goals.

(c) The director's state-wide listing shall also include a listing of currently pending and previously implemented partnership initiatives and an evaluation of their performance.

50-5C-8.

(a) Each county, municipal corporation, and local school district in this state is encouraged to provide to the director not later than July 1, 2012, a compilation of all programs, services, and activities carried out and delivered by such political subdivision, together with the governing body's evaluation of whether each program, service, or activity is a candidate for a partnership initiative or is an inherently governmental activity which is not a candidate for a partnership initiative.

(b) Based on a review of political subdivision compilations by the council and the director, the director shall as part of the annual report include a state-wide listing of programs, services, and activities which are in the director's opinion candidates for partnership initiatives, with a ranking of suitability based on likely increased efficiency, cost savings, or other goals.

(c) The political subdivision compilations and the director's state-wide listing shall also include a listing of currently pending and previously implemented partnership initiatives and an evaluation of their performance.

(d) In order to be eligible for a grant of state funds under Code Section 50-5C-9, a political subdivision shall have participated in the compilation process provided for in this Code section.

50-5C-9.

Funds may be appropriated to the Department of Community Affairs for grants to political subdivisions to evaluate, implement, or evaluate and implement partnership initiatives. The award of any such grant shall require the prior review and approval of the director.

50-5C-10.

State agency implementation of partnership initiatives which have been reviewed and approved by the director shall be eligible for the system of financial incentives to encourage agencies to identify and propose cost-saving initiatives provided for in Code Section 45-12-95.

50-5C-11.

No existing law of this state shall be construed to prohibit the carrying out of a program, the delivery of a service, or the performance of an activity through a partnership initiative

unless such law by its express terms clearly and definitely requires an inherently governmental activity.

50-5C-12.

In addition to any other terms or conditions which may be specified by the director, a proposed partnership initiative shall include the development of a business case that considers relevant factors which may include but shall not necessarily be limited to any of the following:

(1) A detailed description of the program, service, or activity for which the outsourcing is proposed;

(2) A description and analysis of the current governmental performance of the program, service, or activity;

(3) The goals desired to be achieved through the proposed outsourcing and the rationale for such goals;

(4) A citation to the existing or proposed legal authority for the program, service, or activity;

(5) A description of available options for achieving the goals;

(6) An analysis of the advantages and disadvantages of each option, including, at a minimum, potential performance improvements and risks;

(7) A description of the current market for the contractual services that are under consideration for outsourcing;

(8) A cost-benefit analysis documenting the direct and indirect specific baseline costs, savings, and qualitative and quantitative benefits involved in or resulting from the implementation of the recommended option or options. Such analysis shall specify the schedule that, at a minimum, must be adhered to in order to achieve the estimated savings. All elements of cost shall be clearly identified in the cost-benefit analysis, described in the proposed partnership initiative, and supported by applicable records and reports;

(9) A description of differences among current government policies and processes and, as appropriate, a discussion of options for or a plan to standardize, consolidate, or revise current policies and processes, if any, to reduce the customization of any proposed solution that would otherwise be required;

(10) A description of the specific performance standards that shall, at a minimum, be met to ensure adequate performance;

(11) The projected time frame for key events from the beginning of the procurement process through the expiration of a contract;

(12) A plan to ensure compliance with the public records law;

160 (13) A specific and feasible contingency plan addressing contractor nonperformance and  
161 a description of the tasks involved in and costs required for its implementation;

162 (14) A transition plan for addressing changes in the number of government personnel,  
163 affected business processes, employee transition issues, and communication with affected  
164 stakeholders, such as agency clients and the public. The transition plan shall contain a  
165 reemployment and retraining assistance plan for employees who are not retained by  
166 government employer or employed by the contractor;

167 (15) A plan for ensuring access by persons with disabilities in compliance with  
168 applicable state and federal law;

169 (16) A description of any legislative and budgetary actions necessary to accomplish the  
170 proposed outsourcing;

171 (17) A scope-of-work provision that clearly specifies each service or deliverable to be  
172 provided, including a description of each deliverable or activity that is quantifiable,  
173 measurable, and verifiable;

174 (18) A service-level-agreement provision describing all services to be provided under the  
175 terms of the agreement, the government's service requirements and performance  
176 objectives, specific responsibilities of the government and the contractor, and the process  
177 for amending any portion of the service-level agreement. Each service-level agreement  
178 shall contain an exclusivity clause that allows the government to retain the right to  
179 perform the program, service, or activity, directly or with another contractor, if service  
180 levels are not being achieved;

181 (19) A provision that identifies all associated costs, specific payment terms, and payment  
182 schedules, including provisions governing incentives and financial disincentives and  
183 criteria governing payment;

184 (20) A provision that identifies a clear and specific transition plan that shall be  
185 implemented in order to complete all required activities needed to transfer the program,  
186 service, or activity from the government to the contractor and operate the program,  
187 service, or activity successfully;

188 (21) A performance-standards provision that identifies all required performance  
189 standards, which shall include, at a minimum:

190 (A) Detailed and measurable acceptance criteria for each deliverable and service to be  
191 provided to the government under the terms of the contract which document the  
192 required performance level;

193 (B) A method for monitoring and reporting progress in achieving specified  
194 performance standards and levels; and

195 (C) The sanctions or disincentives that shall be imposed for nonperformance by the  
196 contractor or the government;

197 (22) A provision that requires the contractor and its subcontractors to maintain adequate  
198 accounting records that comply with all applicable federal and state laws and generally  
199 accepted accounting principles;

200 (23) A provision that authorizes the government to have access to and to audit all records  
201 related to the contract and subcontracts, or any responsibilities or functions under the  
202 contract and subcontracts, for purposes of legislative oversight, and a requirement for  
203 audits by a service organization in accordance with professional auditing standards, if  
204 appropriate;

205 (24) A provision that requires the contractor to interview and consider for employment  
206 with the contractor each displaced government employee who is interested in such  
207 employment;

208 (25) A contingency-plan provision that describes the mechanism for continuing the  
209 operation of the program, service, or activity including transferring the program, service,  
210 or activity back to the government or a successor contractor if the contractor fails to  
211 perform and comply with the performance standards and levels of the contract and the  
212 contract is terminated;

213 (26) A provision that requires the contractor and its subcontractors to comply with public  
214 records laws and specifically to:

215 (A) Keep and maintain the public records that ordinarily and necessarily would be  
216 required by the government in order to perform the program, service, or activity;

217 (B) Provide the public with access to such public records on the same terms and  
218 conditions that the government would provide the records;

219 (C) Ensure that records that are exempt or records that are confidential and exempt are  
220 not disclosed except as authorized by law; and

221 (D) Meet all requirements for retaining records and transfer to the government, at no  
222 cost, all public records in possession of the contractor upon termination of the contract  
223 and destroy any duplicate public records that are exempt or confidential and exempt.  
224 All records stored electronically shall be provided to the government in a format that  
225 is compatible with the information technology systems of the government;

226 (27) A provision that addresses ownership of intellectual property; and

227 (28) If applicable, a provision that allows the government to purchase from the  
228 contractor, at its depreciated value, assets used by the contractor in the performance of  
229 the contract."

## 230 **SECTION 2.**

231 All laws and parts of laws in conflict with this Act are repealed.